

41-2051. Definitions

In this chapter, unless the context otherwise requires:

1. "Biodiesel" means a diesel fuel substitute that satisfies all of the following:

(a) Is produced from nonpetroleum renewable resources if the qualifying volume of nonpetroleum renewable resources meets the standards for California diesel fuel as adopted by the California air resources board pursuant to 13 California code of regulations sections 2281 and 2282 in effect on January 1, 2000.

(b) Meets the registration requirement for fuels and additives established by the environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01.

(c) The use of the diesel fuel substitute complies with the requirements listed in 10 Code of Federal Regulations part 490, as printed in the federal register, volume 64, number 96, May 19, 1999.

(d) Is sold, offered or exposed for sale as a neat product or blended with diesel fuel.

2. "Certification" means the process of determining the accuracy of a commercial device to the standards of this state by a registered service representative or the department.

3. "Commercial device" means any weighing, measuring, metering or counting device that is used to determine the direct cost of things sold or offered or exposed for sale, or used to establish a fee for service if the cost is based on weight, measure or count, except that it does not include those devices used for in-house packaging, inventory control or law enforcement purposes.

4. "Commodity" means any merchandise, product or substance produced or distributed for sale to or use by others.

5. "Correct" as used in connection with weights and measures means conformance to all applicable requirements of this chapter.

6. "Department" means the department of weights and measures.

7. "Diesel" means a refined middle distillate for use as a fuel in a compression-ignition internal combustion engine.

8. "Director" means the director of the department of weights and measures.

9. "Inspector" means state officials of the department of weights and measures.

10. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers, including the driver.

11. "Liquid fuel measuring device" means any meter, pump, tank, gauge or apparatus used for volumetrically determining the quantity of any internal combustion engine fuel, liquefied petroleum gas or low viscosity heating oil.

12. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers, including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation service as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

13. "Motor fuel" means a petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, number one or number two diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine, including biodiesel blends and the ethanol blend e85 as defined in ASTM D5798-99.

14. "Package" means any commodity enclosed in a container or wrapped in any manner in advance of sale in units suitable for either wholesale or retail trade.

15. "Person" means both the plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies and associations.

16. "Public weighmaster" means any person who is engaged in any of the following:

(a) The business of weighing any object or thing for the public generally for hire or for internal use and issuing for that weighing a weight certificate intended to be accepted as an accurate weight upon which a purchase or sale is to be based or on which a service fee is to be charged.

(b) The business of weighing for hire motor vehicles, trailers or semitrailers and issuing weight certificates intended to be accepted as an accurate weight for the purpose of determining the amount of any tax, fee or other assessment on the vehicles.

17. "Reference standards" means the physical standards of the state that serve as the legal reference from which all other standards and weights and measures are derived.

18. "Registered service agency" means any agency, firm, company or corporation that for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial device or tests or repairs vapor recovery systems or vapor recovery components and that has been issued a license by the department.

19. "Registered service representative" means any individual who for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial device or tests or repairs vapor recovery systems or vapor recovery components and who has been issued a license by the department.

20. "Retail seller" means a person whose business purpose is to sell, expose or offer for sale or use any package or commodity by weight, measure or count.

21. "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.

22. "Secondary standards" means the physical standards that are traceable to the reference standards through comparisons, using acceptable

laboratory procedures, and that are used in the enforcement of weights and measures laws and rules.

23. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that is registered as a taxi in this state or any other state, that provides passenger services and that:

(a) Does not operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined primarily on the basis of the distance traveled.

24. "Taxi meter" means a commercial device that meets the requirements of the national institute of standards and technology handbook 44 as prescribed by section 41-2064.

25. "Weight" as used in connection with any commodity means net weight.

26. "Weights" or "measures", or both, means all weights, measures, meters or counters of every kind, instruments and devices for weighing, measuring, metering or counting and any appliance and accessories associated with any or all such instruments and devices.

41-2052. Political subdivisions; taxis, livery vehicles and limousines

This title does not prohibit a political subdivision of this state or a public airport operator that operates a public airport pursuant to section 28-8421, 28-8423 or 28-8424 from establishing the number of livery vehicles, taxis or limousines that may conduct business in the political subdivision or at a public airport operating pursuant to section 28-8421, 28-8423 or 28-8424 or from setting additional or more restrictive requirements for the conduct of that business.

41-2061. Administration of chapter; director; appointment; compensation; search committee; advisory committee

A. The director shall administer the provisions of this chapter.

B. The director shall be appointed by the governor pursuant to section 38-211 from the names submitted by the search committee in accordance with subsection C of this section and is eligible to receive compensation pursuant to section 38-611.

C. A search committee is established for the purpose of soliciting and screening applicants and submitting up to three names to the governor for the position of director of the department when a vacancy in the office of director exists. The governor may reject the names submitted by the search committee and direct the search committee to submit additional names for consideration. The committee shall consist of nine members appointed by the governor from the following groups:

1. One member representing retail trade.
2. One member representing wholesale trade.
3. One member representing the liquid petroleum industry.
4. One member representing agriculture.
5. One member representing the weight and measure manufacturing industry.
6. Four members representing consumers.

D. The names for director shall be chosen based on practical experience, training and knowledge in weights and measures practices, procedures, laws and administrative functions. Members of the search committee shall select a chairman from the membership, and members of the search committee are not eligible to receive compensation or reimbursement of expenses.

E. The director may appoint an advisory committee consisting of five members to review, advise and make recommendations to the director in the administration of the provisions of this chapter and regarding proposed rules provided for in this chapter.

41-2062. Standard weights and measures

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of such systems shall be used for all commercial purposes in the state. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents, as published by the national institute of standards and technology are recognized and shall govern weighing and measuring equipment and transactions in the state.

41-2063. Physical standards

Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the national institute of standards and technology, shall be the state reference standards of weights and measures, and shall be maintained in such calibration as prescribed by the national institute of standards and technology. All secondary standards may be prescribed by the director and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the director.

41-2064. Technical requirements for commercial devices

The specifications, tolerances and other technical requirements for commercial devices as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 44, "specifications, tolerances, and other technical requirements for commercial weighing and measuring devices" shall apply to commercial weighing and measuring devices in the state. The edition of the national institute of standards and technology handbook 44 shall be determined by rule, pursuant to section 41-2065, subsection A, paragraph 4.

41-2065. Powers and duties; definition

A. The department shall:

1. Maintain custody of the state reference standards of weights and measures that are traceable to the United States prototype standards and that are supplied to the states by the federal government or that are otherwise approved as being satisfactory by the national institute of standards and technology.

2. Keep the state reference standards in a safe and suitable place in the metrology laboratory of the department and ensure that they shall not be removed from the laboratory except for repairs or for calibration as may be prescribed by the national institute of standards and technology.

3. Keep accurate records of all standards and equipment.

4. Adopt any rules necessary to carry out this chapter and adopt reasonable rules for the enforcement of this chapter. These rules have the force and effect of law and shall be adopted pursuant to chapter 6 of this title. In adopting these rules, the director shall consider, as far as is practicable, the requirements established by other states and by authority of the United States, except that rules shall not be made in conflict with this chapter.

5. Publish rules adopted pursuant to this chapter and issue appropriate copies at no cost to all new applicants for licensure and certification. Updated copies of the rules shall be distributed, on request, at no cost to the public.

6. Investigate complaints made to the department concerning violations of this chapter and, on its own initiative, conduct investigations it deems appropriate to develop information relating to prevailing procedures in commercial quantity determination and relating to possible violations of this chapter, and in order to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

7. Establish labeling standards, establish standards of weight, measure or count and establish reasonable standards of fill for any packaged commodity, and may establish standards for open dating information.

8. Grant, pursuant to this chapter, exemptions from the licensing provisions of this chapter for weighing and measuring instruments, standards or devices when the ownership or use of the instrument or device is limited to federal, state or local government agencies in the performance of official functions. On request, the department may conduct inspections of the instruments, standards or devices and shall charge a fee pursuant to section 41-2092, subsection B.

9. Delegate to appropriate personnel any of the responsibilities of the director for the proper administration of this chapter.

10. Inspect and test weights and measures kept, offered or exposed for sale.

11. Inspect and test, to ascertain if they are correct, weights and measures commercially used either:

(a) In determining the weight, measure or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count.

(b) In computing the basic charge or payment for services rendered on the basis of weight, measure or count.

12. Test, at random, commodities, weights and measures used in public institutions for which monies are appropriated by the legislature. The testing of commodities, weights and measures in public institutions shall include, but not be limited to, items:

(a) That have historically been of short weight, measure or count.

(b) Found to be of short weight, measure or count by other jurisdictions.

(c) To be tested as part of a regional or national survey.

13. Test, approve for use and affix a seal of approval for use of all weights, measures and commercial devices manufactured in or brought into this state as it finds to be correct and shall reject and mark as rejected weights, measures and devices it finds to be incorrect. Weights, measures and devices that have been rejected may be seized by the department if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The department shall condemn and may seize weights, measures and devices that are found to be incorrect and that are not capable of being made correct.

14. Sample and test motor fuel that is stored, sold or exposed or offered for sale or that is stored for use by a fleet owner to determine whether the motor fuel meets the standards for motor fuel set forth in section 41-2083 and article 6 of this chapter and in any rule adopted by the director pursuant to this chapter. For the purposes of this paragraph, "fleet owner" has the same meaning prescribed in section 41-2121.

15. Test all mandated stage I and stage II vapor recovery systems that are installed or operated in this state not less than annually and if the systems are determined to be in compliance with the law approve those systems for use and reject, mark as rejected and stop the use of those systems determined not to be in compliance with the law.

16. Inspect facilities at which motor fuel is stored, sold or exposed or offered for sale to determine whether dispensing devices are properly labeled.

17. Publish and distribute to consumers weighing and measuring information.

18. Weigh, measure or inspect commodities kept, offered or exposed for sale, sold or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this chapter or rules adopted pursuant to this chapter. In carrying out the provisions of this section, the director shall employ recognized sampling procedures, such as are designated in appropriate national institute of standards and technology handbooks and supplements to those handbooks, except as modified or rejected by rule.

19. Allow reasonable variations from the stated quantity of contents only after a commodity has entered intrastate commerce. These variations shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice.

20. Prescribe the standards of weight and measure and additional equipment methods of test and inspection to be employed in the enforcement of this chapter. The director may prescribe or provide the official test and inspection forms to be used in the enforcement of this chapter.

21. Apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this chapter.

22. Report to the governor on August 1 each year and at such other times as may be required on the work accomplished under this chapter.

23. Employ such personnel as needed to assist in administering this chapter.

24. Ensure that any information that is required to be filed with the department, that relates to the contents of motor fuels that are sold in this state and that is a trade secret as defined in section 49-201 is not disclosed.

25. Establish by rule labeling standards for tanks and containers of motor fuels.

B. The director may provide for the periodic examination and inspection of metering devices, including but not limited to devices utilized to measure usage of electricity, natural gas or water by a consumer. Examination and inspection authority shall not apply to metering devices owned by federal, state or local government agencies unless requested by the government agency that owns the metering devices.

C. The director may establish standards for the presentation of cost-per-unit information. Nothing in this subsection shall be construed to mandate the use of cost-per-unit information in connection with the sale of any standard packed commodity.

D. The director, when necessary to carry out this chapter, may adopt and enforce rules relating to quality standards for motor fuel, kerosene, oil, except used oil fuel, and hazardous waste fuel, lubricating oils, lubricants, antifreeze and other liquid or gaseous fuels. The director shall adopt rules to assure that oxygenated fuels, as described in article 6 of this chapter, stored, used, sold or exposed or offered for use or sale are blended and stored, sold, exposed or offered in such a manner as to assure that the oxygenated fuels are properly blended, that they meet the standards set forth in section 41-2083 and article 6 of this chapter, and in rules adopted pursuant to this chapter, and that dispensers at which the oxygenated fuels are dispensed are labeled as defined by rule of the department in such a manner as to notify persons of the type of oxygenated fuel being dispensed and the maximum percentage of oxygenate by volume contained in the oxygenated fuel. The director of the department of weights and measures shall consult with the director of the department of environmental quality in adopting rules pursuant to this subsection.

E. Testing and inspection conducted pursuant to this chapter shall be done, to the extent practicable, without prior notice, by a random systematic method determined by the director or in response to a complaint by the public. The testing and inspection may be done by private persons and firms pursuant to contracts entered into by the director in accordance with chapter 23 of this title or by a registered service agency or registered service representative licensed pursuant to section 41-2094. The director shall

establish qualifications of persons and firms for selection for purposes of this subsection. The persons or firms conducting the testing and inspection shall immediately report to the department any violations of this chapter and incorrect weights, measures, devices, vapor recovery systems or vapor recovery components for investigation and enforcement by the department. A person or firm that tests or inspects a weight, measure, device, vapor recovery system or vapor recovery component that is rejected shall not correct the defect causing the rejection without the permission of the department.

F. During the course of an investigation or an enforcement action by the department, information regarding the complainant is confidential and is exempt from title 39, chapter 1, unless the complainant authorizes the information to be public.

G. For the purposes of the labeling requirements prescribed in this section, "oxygenated fuel" means a motor fuel blend containing 1.5 per cent or more by weight of oxygen.

41-2066. Enforcement powers of the director and inspectors

A. When necessary for the enforcement of this chapter and rules adopted pursuant to this chapter, the director or the director's agents and inspectors shall:

1. Enter any commercial, nonprofit business or governmental premises during normal operating hours, except that if the premises are not open to the public, the director or the director's agents and inspectors shall first present their credentials.

2. Issue stop-use, hold and removal orders with respect to any weights and measures commercially used, stop-sale, hold and removal orders with respect to any commodities, bulk commodities or motor fuel kept, offered or exposed for sale, stop-use and hold orders with respect to a vapor recovery system or parts of a vapor recovery system and stop-use, stop-sale, hold and removal orders with respect to any motor fuel found to be in violation of this chapter or rules adopted pursuant to this chapter.

3. Seize for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package or commodity found to be used, retained, offered or exposed for sale or sold in violation of this chapter or rules adopted pursuant to this chapter.

4. Stop any commercial vehicle upon reasonable cause to believe that the vehicle contains evidence of a violation of this chapter and, after presentment of the director's or the director's agent's or inspector's credentials, inspect the contents, require that the person in charge of the vehicle produce any documents in the person's possession concerning the contents and require the person to proceed with the vehicle to some specified place for inspection.

B. With respect to the enforcement of this chapter, the director or the director's agents or inspectors may issue a citation to any violators of this chapter in accordance with the provisions of section 13-3903.

C. The director or the director's agents or inspectors may apply for a special inspection warrant for inspection of real or personal property for the purpose of enforcement of this chapter. The special inspection warrant shall be issued as provided in section 49-433.

41-2067. Operation of state metrology laboratory

A. The director shall establish and operate within the department the state metrology laboratory.

B. A commercial device shall not be approved for use in the state unless the design and construction comply with national institute of standards and technology requirements.

C. All commercial devices approved and certified shall meet the tolerance, design and construction requirements prescribed by the national institute of standards and technology.

D. All commercial devices determined unfit for approval shall be rejected without testing.

E. All weights, weight sets, measures, meters, counters or other devices used by registered service representatives shall show an indication of the approval date and jurisdiction issuing the approval.

F. All persons who install, service or repair commercial devices in this state shall submit the test equipment used to the department's metrology laboratory for approval at least annually. A certificate of approval that specifically identifies the test equipment and that is issued by another state laboratory may be accepted in lieu of submitting equipment if the other state laboratory is certified by the national institute of standards and technology.

G. All weights, measures, meters, counters or other devices shall be tested in the order they are scheduled in the laboratory unless arrangements for testing have been made in advance.

H. Work completed in the metrology laboratory shall be paid for pursuant to the fees prescribed in the rules of the department.

41-2068. Fees to general fund

The director shall deposit, pursuant to sections 35-146 and 35-147, all fees collected in the state general fund.

41-2081. Sale of commodities

A. A person shall not sell or offer or expose for sale less than the quantity the person represents.

B. As a buyer, a person shall not take any more than the quantity the person represents when the person furnishes the weight or measure by means of which the quantity is determined.

C. A person shall not misrepresent the price of any commodity or service sold or offered, exposed or advertised for sale by weight, measure or count or represent the price in any manner calculated or tending to mislead or in any way deceive a person.

D. Except as otherwise provided by the director, commodities in liquid form shall be sold by liquid measure or by weight, and commodities not in liquid form shall be sold only by weight, by measure or by count, as long as the method of sale provides accurate quantity information.

E. If the quantity is determined by the seller, bulk sales shall be accompanied by a delivery ticket containing the following information unless exempted by rule:

1. The name and address of the vendor and purchaser.
2. The date delivered.
3. The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity.
4. The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale.

5. The count of individually wrapped packages, if more than one.

F. Except as otherwise provided in this chapter or by rules adopted pursuant to this chapter, any package kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain and conspicuous declaration of:

1. The identity of the commodity in the package, unless the commodity can easily be identified through the wrapper or container.
2. The quantity of contents in terms of weight, measure or count.
3. The name and place of business of the manufacturer, packer or distributor, in the case of any package kept, offered or exposed for sale or sold in any place other than on the premises where packed.
4. The price, except as provided in subsections K and L.

G. In addition to the declarations required by subsection F, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

H. If a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or rule to appear on the package. If a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

I. The packager of a short weighted item offered for sale is liable under this chapter.

J. If a retail seller engaging in the sale of motor fuel posts the selling price of the fuel on the premises, the seller shall post the selling price only by the price per gallon, except that if the fuel is dispensed by a measure other than whole gallons the seller shall represent the selling price for each unit of such other measure on the individual pump or other dispensing device. If a retail seller engaging in the sale of motor fuel advertises the price of the fuel off the premises, the retail seller shall advertise the price only by the price per gallon.

K. Instead of each package bearing the price as required under subsection F, paragraph 4, the seller may post the price of the package in bold type that measures no less than three-eighths of an inch on the shelf or display at the point of display of the product. If the price on the shelf or display is less than eighteen inches from floor level, the price shall be angled upward from vertical at least fifteen degrees.

L. If the package is offered for sale at a price reduced by a percentage or a fixed amount from a previously offered price, the reduction shall be displayed at the point of display of the package in the manner required by this section.

M. On the request of a consumer, a retail seller shall provide:

1. A means of recording prices such as grease pencils, felt markers, scanners or other similar instruments for recording the price.
2. A written statement of the retail seller's policies regarding errors in pricing.

41-2082. Sale, delivery or consignment of motor fuel;
temperature presumption

For the purpose of any sale, offer to sell, delivery or consignment of motor fuel in a quantity of five thousand gallons or more, the volume of the motor fuel for the purposes of calculating the price of the motor fuel is considered to be the volume that the quantity of the motor fuel would equal at the time of loading for sale, delivery or consignment if the temperature of the motor fuel was sixty degrees Fahrenheit. Any correction or adjustment required by this section shall be calculated on the basis of American society for testing and materials D1250-80, table 6B.

41-2083. Standards for motor fuel; exceptions

(L07, Ch. 292, sec. 8)

A. Except as provided in section 41-2083.01 and subsections C, D, E, F, G, K, L, M and N of this section, a retail seller or fleet owner shall not store, sell or expose or offer for sale any motor fuel, kerosene, oil or other liquid or gaseous fuel or lubricating oil, lubricant, mixtures of lubricants or other similar products if the product fails to meet the standards specified in this section and in the rules adopted by the director.

B. A person shall not misrepresent the nature, origination, quality, grade or identity of any product specified in subsection A of this section or represent the nature, origination, quality, grade or identity of such product in any manner calculated or tending to mislead or in any way deceive.

C. After consultation with the director of the department of environmental quality, the standards and test methods for motor fuels shall be established by the director of the department of weights and measures by rule.

D. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A as defined in section 49-541 shall be 9.0 pounds per square inch from and after September 30 through January 31 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event as defined by section 41-2121 is exempt from this subsection.

E. From and after September 30 through March 31 of each year a person shall not supply or sell gasoline that exceeds the ASTM D4814 class A vapor pressure/distillation class ten volume per cent evaporated distillation temperature.

F. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in a county with a population of one million two hundred thousand persons or more and any portion of a county contained in area A as defined in section 49-541 shall be 7.0 pounds per square inch from and after May 31 through September 30 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event as defined by section 41-2121 is exempt from this subsection.

G. Exclusively for the purposes of transportation conformity and only if the administrator of the United States environmental protection agency fails to approve the applicable plan required pursuant to section 49-406, maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in area B as defined in section 49-541 shall be ten pounds per square inch from and after September 30 through March 31 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event as defined by section 41-2121 is exempt from this subsection.

H. Notwithstanding subsections D, F and G of this section, the director of the department of weights and measures in consultation with the

director of the department of environmental quality shall approve alternate fuel control measures that are submitted by manufacturers or suppliers of gasoline and that the directors determine will result in either of the following:

1. Motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection D of this section and section 41-2123. In making this determination, the director of the department of weights and measures and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by this section and with the minimum oxygen content or percentage by volume of ethanol as prescribed by section 41-2123.

2. Motor vehicle non-methane hydrocarbon emissions that are equal to or less than the emissions that result under compliance with subsection F of this section. In making this determination, the director of the department of weights and measures and the director of the department of environmental quality shall compare the motor vehicle non-methane hydrocarbon emissions of the alternate fuel control measure with the motor vehicle non-methane hydrocarbon emissions of a fuel that complies with the maximum vapor pressure standard as prescribed by subsection F of this section.

- I. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection H of this section and this subsection may be used by any manufacturer or supplier of gasoline unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. Manufacturers and suppliers who use an approved alternate fuel control measure shall annually submit a compliance plan to the director of the department of weights and measures no later than sixty days before the first day of a gasoline control period.

- J. A person shall not sell or offer or expose for sale diesel fuel grade 1, 2 or 4 as defined in ASTM D975 that contains sulfur in excess of:

1. For low sulfur diesel fuel, five hundred parts per million by weight for use in area A as defined in section 49-541.

2. For ultra low sulfur diesel fuel, the amount that conforms with 40 Code of Federal Regulations section 80.520(a)(1).

- K. A person shall not sell or offer or expose for sale biodiesel that is not tested or does not meet the specifications established by ASTM D6751 or any blend of biodiesel and diesel fuel that is not tested or does not meet the specifications established by ASTM D975 and that contains sulfur in excess of five hundred parts per million for use in area A as defined in section 49-541.

- L. A person who blends biodiesel that is intended as a final product for the fueling of motor vehicles shall report to the director by the fifteenth day of each month the quantity and quality of biodiesel shipped to or produced in this state during the preceding month. A person who supplies biodiesel subject to this subsection shall report the following by batch:

1. The percentage of biodiesel in a final blend.

2. The volume of the finished product.

3. For neat biodiesel, the results of analysis for those parameters established by ASTM D6751.

4. For biodiesel blended with any diesel fuel, the results of the analysis of the following motor fuel parameters as established by ASTM D975:

- (a) Sulfur content.
- (b) Aromatic hydrocarbon content.
- (c) Cetane number.
- (d) Specific gravity.
- (e) American petroleum institute gravity.

(f) The temperatures at which ten per cent, fifty per cent and ninety per cent of the diesel fuel boiled off during distillation.

M. The report required by subsection L of this section shall be on a form prescribed by the director and shall contain a certification of truthfulness and accuracy of the data submitted and a statement of the supplier's consent permitting the department or its authorized agent to collect samples and access records as provided in rules adopted by the department. A corporate officer who is responsible for operations at the facility that produces or ships the final product shall sign the report.

N. A person shall label dispensers at which biodiesel is dispensed in such a manner as to notify other persons of the volume percentage of biodiesel in the finished product and that conforms with 40 Code of Federal Regulations sections 80.570, 80.571, 80.572, 80.573 and 80.574 to inform the customer of the sulfur content of the diesel fuel being dispensed.

O. A person shall label each dispenser at which ultra low sulfur diesel fuel is dispensed in a manner that conforms with 40 Code of Federal Regulations sections 80.570, 80.571, 80.572, 80.573 and 80.574 to inform the customer of the sulfur content of the diesel fuel being dispensed.

P. A person shall label each dispenser at which low sulfur diesel fuel is dispensed in a manner that conforms with 40 Code of Federal Regulations sections 80.570, 80.571, 80.572, 80.573 and 80.574 to inform the customer of the sulfur content of the diesel fuel being dispensed.

Q. If any person transfers custody or title of a diesel fuel or distillate, except if the diesel fuel is dispensed into a motor vehicle or nonroad, locomotive or marine equipment, the transferor shall provide to the transferee product transfer documents that conform with 40 Code of Federal Regulations section 80.590.

R. If the transfer of a motor fuel is from a terminal, storage facility, or transmix facility, the product transfer documents shall contain the information prescribed in subsection Q of this section as well as the name and address of the final destination for the shipment, as prescribed by department rule, and must accompany the shipment to its final destination.

41-2084. Heating of motor fuel prohibited

A person shall not sell or offer or expose for sale any motor fuel if the temperature of the motor fuel has been changed by any type of a heating device.

41-2085. Dispensing motor fuel; hold-open latches; definition

A. A retail seller may equip all nozzles from which motor fuel is dispensed with an operating hold-open latch.

B. For the purposes of this section, "hold-open latch" means a device that is an integral part of the nozzle portion of the vapor recovery system and that is specifically manufactured to dispense motor fuel without requiring the consumer's physical contact with the nozzle.

41-2091. Licensing devices used for commercial purposes; authorization to test devices used for all other purposes; fees; certification; transaction privilege tax license records; notification; issuance and revocation of license

A. A person shall not use a commercial device unless the device is licensed or certified as provided in this chapter.

B. A license shall be obtained annually from the department on forms prescribed and furnished by the department. The fee prescribed in this chapter shall be submitted with the prescribed form. A license shall be obtained not later than thirty days following the first day of commercial use for original installations. If the ownership of a device that is licensed is transferred, the ownership of the license may be transferred. On transfer of a license, new licensees shall notify the department of the licensee's name and address and the location of the device. A license for a device shall be posted at the licensed business location in a manner that provides the department access to the license during normal business hours.

C. If a fare is based on time or mileage or both time and mileage, a taxi shall have a commercial device and shall obtain a license as prescribed by the department.

D. Any license issued under this chapter applies only to the instrument or device specified in the license, except that the director may permit the license to be applicable to a replacement for the original instrument or device.

E. Noncommercial devices may be tested by the department pursuant to this chapter. A weighing device owned by a person who uses it only for the purpose of weighing the person's own livestock or agricultural products and for no commercial purposes is declared to be a noncommercial device, and the owner of the device is exempt from paying any licensing fees collected pursuant to this chapter.

F. If a commercial livestock scale is used for thirty or more days in a calendar year, the scale is required to be licensed. If a commercial livestock scale is used for fewer than thirty days in a calendar year, the scale is required to be certified. If an owner or operator of a commercial livestock scale requests that the department certify the scale, the certification fee shall be comparable to the license fee prescribed in section 41-2092. If an owner or operator of a noncommercial scale requests that the department certify the scale, the certification fee shall be comparable to the license fee prescribed in section 41-2092.

G. At the request of the owner or user of a portable batch plant, the department may certify the portable batch plant. If the department certifies a portable batch plant, the certification fee shall be comparable to the license fee prescribed in section 41-2092.

H. Any portable measuring device that is five gallons or less and that is properly marked by the manufacturer according to standards established by the national institute of standards and technology shall be exempt from the licensing and certification provisions of this chapter.

I. For the purpose of ascertaining compliance with the licensing provisions of this article, the department of revenue shall provide the

department of weights and measures with a monthly report of all transaction privilege tax licenses issued in the prior month. The report shall include the business name, type of business and business address of the licensee.

J. The department of revenue shall annually notify each transaction privilege tax licensee that the licensee is required to register new or existing weighing or measuring devices with the department of weights and measures.

K. The department shall not issue a license for a taxi, livery vehicle or limousine, unless the taxi, livery vehicle or limousine meets the requirements for both of the following:

1. Motor vehicle licensing as prescribed by the department of transportation.

2. Motor vehicle insurance as prescribed by section 28-4033.

L. The department shall revoke a license if the taxi, livery vehicle or limousine fails to maintain the requirements for either of the following:

1. Motor vehicle licensing as prescribed by the department of transportation.

2. Motor vehicle insurance as prescribed by section 28-4033.

M. A taxi or livery vehicle shall have a license issued under this chapter posted on the outside of the rear window as required by the department. A limousine shall carry a license issued under this chapter inside the vehicle at all times.

41-2092. Licensing fees

A. The following fees shall be paid to the department as license fees for devices used for commercial purposes:

Schedules of Fees

1. Weighing devices:

0 - 500 pounds capacity (or metric equivalent)	\$ 12.00
501 - 2,000 pounds capacity	18.00
2,001 - 7,500 pounds capacity	36.00
7,501 - 20,000 pounds capacity	80.00
20,001 - 60,000 pounds capacity	120.00
60,001 pounds capacity and over	180.00
2. Liquid metering devices (meters) other than for liquid petroleum gas and utility meters:

maximum 12 gallons per minute and under	12.00
maximum 13 - 150 gallons per minute	36.00
maximum 151 - 500 gallons per minute	90.00
maximum 501 - 1,000 gallons per minute	138.00
maximum 1,001 gallons per minute and over	168.00
3. Motor fuel devices (dispensers) other than for liquid petroleum gas (not including satellite hoses or nozzles):

	Standard	Stage II
each meter	15.00	30.00
each blending valve	15.00	30.00
high volume (over 19 gallons per minute)		
diesel per hose and nozzle		15.00
keylock, limited access, with accumulators, per hose and nozzle		22.50
remote indicator and control unit (no hoses or nozzles) (accessory only)		22.50
4. Liquid measuring devices for liquid petroleum gas (meters):

small bottle fill measuring devices	24.00
motor fuel measuring devices, uncompensated	24.00
motor fuel measuring devices, temperature compensating, including compressed natural gas filling devices	48.00
motor fuel measuring devices, keylocks	48.00
3/4" and 1" meters, uncompensated	48.00
1 1/4", 1 1/2" and 1 3/4" meters, uncompensated	72.00
2" meters and larger, uncompensated	72.00
3/4" and 1" meters, temperature compensating	54.00
1 1/4", 1 1/2" and 1 3/4" meters, temperature compensating	90.00
2" meters and larger, temperature compensating	96.00
5. Linear measuring devices:

all linear measuring mechanical devices	24.00
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6. Time measuring devices:

all time measuring mechanical, electrical and	
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electronic devices	24.00
7. Counting devices:	
all mechanical and electronic counting devices	12.00
B. Testing, inspection, certification and calibration fees shall be paid pursuant to the fee schedule set forth in subsection A or the rules of the department. The department shall waive license fees for customer parking time measuring meters owned by municipalities.	
C. Issuance or renewal of license as:	
1. Public weighmaster	48.00
2. Registered service agency	24.00
3. Registered service representative	4.80
D. The fees set forth in this section are the maximum amounts that may be charged, but the director, at the director's discretion, may reduce the fees to any amount the director deems necessary.	
E. The director may prorate the fees set forth in this section for partial year application.	
F. If a person fails to pay a license, permit or certification fee on or before the date the fee is due, the department shall impose a penalty equal to twenty per cent of the fee. For each thirty day period after the date the fee is due, the department shall impose an additional penalty equal to twenty per cent of the fee. If a person fails to pay a license, permit or certification fee and all related penalties for ninety days after the fee is due, the department shall cancel the license, permit or certification.	

41-2093. License as public weighmaster or deputy weighmaster required; application; fee; renewal; exemptions

A. A person shall not serve as a public weighmaster or deputy weighmaster unless the person is issued a public weighmaster or deputy weighmaster license by the department in accordance with practices and procedures to be established by the director. An applicant for a public weighmaster or deputy weighmaster license shall:

1. Demonstrate a thorough knowledge of all appropriate weights and measures laws, rules and policies.

2. Have possession of, or have available for use, a scale that is of sufficient capacity and size and that is licensed and certified pursuant to section 41-2091.

3. Demonstrate the necessary experience and training to operate the scale.

4. Pass the required examination administered by the department.

B. An application for a public weighmaster or deputy weighmaster license shall be submitted to the department on a form prescribed and furnished by the department and shall be accompanied by the license fee prescribed in section 41-2092. The department shall issue a public weighmaster or deputy weighmaster license for a period of twelve calendar months. The license expires on the first day of the month and year indicated on the license. A public weighmaster or deputy weighmaster license shall be posted at the licensed scale site in a manner that provides the department access to the license during normal business hours.

C. If a licensee submits a license renewal application to the department before the date of expiration of the current license together with the renewal fee prescribed by the department, the existing license shall be valid for thirty days following its expiration date, or until issuance of the renewal license, whichever occurs first.

D. Except as otherwise provided in subsection F of this section, certified weighing of any property, livestock or commodity shall be performed only by a public weighmaster or deputy weighmaster. The following persons are not required to obtain licenses as public weighmasters or deputy weighmasters:

1. A person weighing property, livestock or a commodity that the person or the person's employer is either buying or selling for the person's or the person's employer's own account.

2. A person weighing property, livestock or a commodity in conjunction with or on behalf of a publicly sponsored or nonprofit organization sponsored exposition, fair or show event.

E. The official weighing of vehicles or conveyances by any employee of a city, county or state agency for weight-control regulatory purposes on public highways, roads or streets does not constitute public weighing.

F. On request and without charge, the department may issue a limited weighmaster license to any qualified officer or employee of a city, a county or the state authorizing the officer or employee to act as a public weighmaster only within the scope of the officer's or employee's official employment and duties in enforcing local ordinances substantially complying with the requirements of this chapter. While performing the duties of a limited weighmaster, a limited weighmaster shall have the limited weighmaster's license in the limited weighmaster's possession.

G. The department shall approve all forms, certificates, seals and other documents together with practices, procedures and equipment used by public weighmasters or deputy weighmasters in the performance of their duties. A public weighmaster or deputy weighmaster shall keep for such period as the department by rule may require a legible copy of each weight certificate the public weighmaster or deputy weighmaster issues. Copies of weight certificates shall be available at all reasonable times for inspection by the department.

41-2094. License required as registered service agency or registered service representative; qualifications; application; fees; renewal

A. A person shall not operate as a registered service agency or as a registered service representative until a license is issued as provided in this section.

B. An applicant for a registered service agency license shall:

1. Submit application information satisfactory to the department.
2. Comply with section 41-2067, subsection E or provide evidence that the applicant's vapor recovery test equipment has been certified by the manufacturer of the equipment within one year of the date of the application or as deemed appropriate by the department.

3. Pay all required fees.

C. An applicant for a registered service representative license shall:

1. Demonstrate a thorough working knowledge of all appropriate weights and measures laws, orders and rules.

2. Demonstrate to the department that the applicant has possession of, or has available for use, weights and testing equipment appropriate in design and adequate in amount.

3. Demonstrate the necessary knowledge, training and experience regarding appropriate standards and testing equipment to service commercial devices, vapor recovery systems or vapor recovery components.

4. Pass the required examination administered by the department.

5. Pay all required fees.

D. An application for a registered service agency or registered service representative license shall be submitted by the applicant to the department on a form prescribed and furnished by the department. The department shall issue a registered service agency or registered service representative license for a period of twelve calendar months. The license expires on the first day of the month and year indicated on the license. Each license shall contain, among other information, a license number. A registered service agency license shall be posted at the licensed business location in a manner that provides the department access to the license during normal business hours. While performing the duties of a registered service representative, a registered service representative shall have a registered service representative's license in the registered service representative's possession.

E. If a licensee submits a license renewal application to the department before the date of expiration of the current license, together with the prescribed renewal fee, the existing license shall be valid for thirty days following its expiration date, or until issuance of the renewal license, whichever occurs first.

F. The director shall publish, from time to time as the director deems appropriate, and may supply on request, lists of registered service representatives and registered service agencies.

G. Each registered service representative license issued by the department shall indicate the type of service approved by the department for the licensee.

H. A registered service agency shall use forms and related procedures prescribed by the department in the performance of its duties. A registered service agency shall keep a legible copy of each form used for at least the time

period prescribed by the department in its rules. Copies of the forms shall be available during normal business hours for inspection by the department.

41-2095. Meters; duplicate receipts

A. Every taxi that has a charge or fare based on time or mileage or both time and mileage shall have a taxi meter.

B. The taxi meter shall be visible to the passengers of a taxi.

C. If a taxi has the capability of producing a duplicate receipt, the driver shall print the duplicate receipt and provide the duplicate receipt to the passenger paying the fare.

41-2096. Signage

A. A taxi or livery vehicle shall display interior signage that contains the licensee's business name and address and that is all of the following:

1. Permanent.
2. In letters at least one-half inch in height.
3. Readily visible.
4. Accurately representative of all fares and the fare computation method.

B. A taxi is required to display exterior signage that contains the licensee's business name and telephone number, that contains the word "taxi" or "cab" and that is all of the following:

1. Permanent.
2. In letters at least three inches in height.
3. Readily visible and a minimum of one inch in height for fare information.
4. Accurately representative of all fares and the fare computation method.

C. For purposes of this section, a livery vehicle shall display exterior signage that is readily visible while the livery vehicle is not occupied by a paying passenger. The signage must contain the business name and the words "livery car" in letters at least three inches in height and shall include fare information at least one inch in height. When a livery vehicle has accepted a passenger and a fare has been determined, a livery vehicle may remove the exterior signage.

41-2111. Unlawful use of device; authorization to prevent such use; seizure; violation; classification

A. When any commercial device specified in this chapter is in commercial use and a valid license for the device has not been procured by the owner, the owner's agent or the operator of the device, the department, after giving notice of the licensing requirements to the owner, the owner's agent or the operator, shall prohibit the further commercial use of the unlicensed device until the proper license has been issued. The department may employ and attach to the device such forms, notices or security seals as it considers necessary to prevent the continued unauthorized use of the device.

B. A registered service representative may also:

1. With approval of the department, remove an official rejection tag placed on a commercial device, vapor recovery system or vapor recovery component.

2. Place in service, until such time as an official examination can be made, a commercial device, vapor recovery system or vapor recovery component that has been officially rejected or placed out of service.

3. Place in service, until such time as an official examination can be made, a commercial device for which a commercial device application has been completed and submitted to the department.

C. The owner of any business who has not applied for and has not been issued a license for the right to do business, involving the use of a commercial device, by the department and who is found selling or offering for sale or delivering or distributing to a consumer is guilty of a class 2 misdemeanor, and the department shall confiscate and seize the commercial device or any vehicle tank, or vehicle tank and meter, or any other such measuring device used by the business for the sale, delivery or distribution as evidence.

D. The director and any other authorized personnel shall not be liable to the owner or any other persons, firms, partnerships, corporations, trusts or agencies for damages, directly or indirectly, caused by or resulting from the seizure.

E. If a commercial device licensed pursuant to this chapter is used contrary to any provision of this chapter or any rule adopted pursuant to this chapter, the department, in addition to any other penalty imposed by this chapter, shall suspend, revoke or refuse to renew the license.

41-2112. Revocation or suspension of licenses; procedure;
judicial review

A. Except as otherwise provided by this section, any proceeding to revoke or suspend a license issued pursuant to this chapter shall be conducted in accordance with chapter 6, article 10 of this title.

B. The director may initiate proceedings for revocation or suspension of a license issued pursuant to this chapter on the director's own motion or on a verified complaint for noncompliance with or a violation of this chapter or of any rule adopted pursuant to this chapter.

C. If, after having been served with the notice of hearing as provided for in chapter 6, article 10 of this title, the licensee fails to appear at the hearing and defend, the department shall proceed to hear evidence against the licensee and shall enter such order as is justified by the evidence, which order shall be final unless the licensee petitions for a review as provided in chapter 6, article 10 of this title.

D. At all hearings the attorney general of this state, one of the attorney general's assistants, or a special assistant designated by the attorney general shall appear and represent the department.

E. Except as provided in section 41-1092.08, subsection H, any final administrative decision made pursuant to this chapter is subject to judicial review pursuant to title 12, chapter 7, article 6.

41-2113. Violation; classification; jurisdiction

A. A person is guilty of a class 1 misdemeanor who:

1. Knowingly hinders, interferes with or obstructs in any way the director or any of the director's agents or inspectors in entering the premises where a commercial device may be kept for inspecting or testing or in the performance of the director's or the director's agent's or inspector's official duties.

2. Impersonates in any way the director or any one of the director's agents or inspectors by the use of the director's seal, or a counterfeit of the director's seal, or in any other manner.

3. Uses, or has in possession for the purpose of using for any commercial purpose, sells, offers or exposes for sale or hire, or has in possession for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used or calculated to falsify any weight or measure.

4. Sells, or offers or exposes for sale, less than the quantity the person represents of any commodity, thing or service.

5. Takes more than the quantity the person represents of any commodity, thing or service, when, as buyer, the person furnishes the weight or measure by means of which the amount of the commodity, thing or service is determined.

B. A person is guilty of a class 2 misdemeanor who:

1. Uses, or has in possession for the purpose of current use for any commercial purpose, a weight or measure that does not bear a seal or mark of approval based on inspection and test as provided in section 41-2065, subsection A, paragraph 11, unless the weight or measure has been exempted from testing by order of the department, or unless the device has been placed in service as provided in this chapter. Any person or persons making use of a commercial device subject to this chapter shall report to the director or the director's representatives, in writing, the number and location of the commercial device and shall promptly report the installation of any new commercial device.

2. Disposes of any rejected or condemned weight or measure in a manner contrary to law or rule.

3. Removes from any weight or measure, contrary to law or rule, any tag, seal or mark placed on the weight or measure by the appropriate authority pursuant to this chapter.

4. Keeps for the purpose of selling, advertising or offering or exposing for sale or sells any commodity, thing or service in a condition or manner contrary to law or rule.

5. Uses in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is so positioned that its indications may not be accurately read and the weighing, metering, measuring or counting operation observed from some position that may reasonably be assumed by a customer.

6. Violates this chapter or rules adopted under this chapter. A continuing violation may be deemed to be a separate violation each day during which the violation is committed for the purpose of imposing a fine.

C. The provisions of this section are in addition to and not in limitation of any other provision of law.

D. The attorney general and the county attorney shall have concurrent jurisdiction to prosecute violations of this chapter.

41-2114. Presumptive evidence of use

When a weight, measure, meter, counter or commercial device is in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that the weight, measure, meter, counter or commercial device is regularly used for the business purpose of the place.

41-2115. Civil penalties

A. A person who violates this chapter, any rule of the department or any license requirement is subject to a civil penalty imposed by the director. A person who violates this chapter, any rule of the department or any license requirement may request a hearing to review a civil penalty imposed under this section. The department shall conduct the hearing in accordance with chapter 6, article 10 of this title. Except as prescribed in subsection B of this section, the civil penalty shall not exceed five hundred dollars for each infraction nor more than five thousand dollars for any thirty day period at each business location, for each registered service representative or for each public weighmaster, provided that no person shall be assessed more than fifty thousand dollars per thirty day period.

B. The director may double the maximum civil penalty if any of the following applies:

1. A commercial device is found to be in violation with results that favor the retailer at more than twice the allowable tolerance as stated in national institute of standards and technology handbook 44.

2. A package is found to exceed the maximum allowable variation for the labeled quantity allowed in national institute of standards and technology handbook 133 or the average error of the lot is twice the sample error limit in favor of the retailer.

3. A stage II vapor recovery system reinspection fails the required tests.

4. A maximum civil penalty has been imposed on a retailer for a price posting or price verification violation and in a reinspection, if conducted within ninety days, the failure rate is ten per cent or more and at least one error is in favor of the retailer.

5. A maximum civil penalty has been imposed on a refiner, refinery, registered supplier or transmix processing facility for a violation of motor fuel quality standards or producing a product transfer document that is incorrect, incomplete or produced in any manner tending to mislead or deceive a person.

C. The attorney general shall bring actions to recover civil penalties pursuant to this section in the superior court in the county in which the violation occurred or in a county where the agency has its office. All monies derived from civil penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

41-2116. Delinquent civil penalties and fees

In addition to any other penalty, if a civil penalty or any fee due pursuant to this chapter has not been paid thirty days after the due date, the civil penalty or fee is delinquent and the department may refuse to issue a license or may revoke a license pursuant to this chapter until the civil penalty or fee is paid in full.

41-2121. Definitions

In this article, unless the context otherwise requires:

1. "Area A" has the same meaning prescribed in section 49-541.
2. "Area B" has the same meaning prescribed in section 49-541.
3. "Area C" means that portion of Pinal county lying west of range 11 east, excluding that portion of the county lying within area A as defined in section 49-541 and that portion of the county within the jurisdiction of any Indian tribe, band, group or community that is recognized by the united states secretary of the interior and that exercises governmental authority within the limits of any Indian reservation under the jurisdiction of the united states government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.
4. "Fleet owner" means a registered owner or lessee of at least twenty-five vehicles.
5. "Gasoline" means a volatile, highly flammable liquid mixture of hydrocarbons that does not contain more than five one-hundredths grams of lead for each United States gallon, that is produced, refined, manufactured, blended, distilled or compounded from petroleum, natural gas, oil, shale oils or coal and other flammable liquids free from undissolved water, sediment or suspended matter, with or without additives, and that is commonly used as a fuel for spark ignition internal combustion engines. Gasoline does not include diesel fuel or the ethanol blend E85 as defined in ASTM D5798-99.
6. "Manufacturer's proving ground" means a facility whose sole purpose is to develop complete advanced vehicles for an automotive manufacturer.
7. "Motor vehicle racing event" means a race that uses unlicensed vehicles that are designed and manufactured specifically for racing purposes and that is conducted on a public or private racecourse for the entertainment of the general public. A motor vehicle racing event includes practice, qualifying and demonstration laps conducted as part of the activities related to a motor vehicle race.
8. "Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, that may be used as a fuel or as a gasoline blending component and that is approved as a blending agent under the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).
9. "Oxygenated fuel" means an unleaded motor fuel blend that consists primarily of gasoline and at least one and one-half per cent by weight of one or more oxygenates and that has been blended consistent with the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).
10. "Product transfer document" means any bill of lading, loading ticket, manifest, delivery receipt, invoice or other documentation used on any occasion when a person transfers custody or title of motor fuel other than when motor fuel is sold or dispensed at a service station or fleet vehicle fueling facility.
11. "Supplier" means any person who imports gasoline into a vehicle emissions control area by means of a pipeline or in truckload quantities for the person's own use within the vehicle emissions control area or any person who sells gasoline intended for ultimate consumption within a vehicle

emissions control area, except that supplier does not mean a person with respect to gasoline supplied or sold by the person to another for resale to a retailer within a vehicle emissions control area or to a fleet owner for consumption within a vehicle emissions control area.

12. "Vehicle emissions control area" has the same meaning prescribed in section 49-541, except that such an area does not include a manufacturer's proving ground that is located in the vehicle emissions control area.

41-2122. Standards for oxygenated fuel; volatility; exceptions

A. From and after September 30 through March 31 of each year, in a county with a population of one million two hundred thousand or more persons and in any portion of a county contained in area A, blends of gasoline with ethanol shall not exceed the volatility requirements prescribed by section 41-2083 and rules adopted by the director under that section. From and after September 30, 1999 through March 31, 2000 and from and after September 30 through March 31 of each year thereafter, in area B, blends of gasoline with ethanol may exceed the volatility requirements prescribed by section 41-2083 and rules adopted by the director under that section by up to one pound per square inch if the base fuel meets the requirements of ASTM D4814 and the final gasoline-ethanol blend contains at least six per cent ethanol by volume but does not exceed United States environmental protection agency waivers. For any other locations and period of time, blends of gasoline with ethanol shall meet the volatility requirements as determined by department rule.

B. Notwithstanding subsection D of this section, the director of the department of weights and measures in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by manufacturers or suppliers of gasoline and that the directors determine will result in motor vehicle carbon monoxide emission reductions that will equal or exceed the reductions that result under subsection D of this section. In making those determinations, the directors shall compare the alternative measure against the emission reduction that would be obtained from a fuel with the maximum vapor pressure standard prescribed by subsection D of this section and the minimum oxygen standard prescribed by section 41-2123 or 41-2125. Alternative fuel control measures approved by the director of the department of weights and measures in consultation with the director of the department of environmental quality may be used by any manufacturer or supplier of gasoline unless the approval is rescinded by the director of the department of weights and measures at least one hundred eighty days before the beginning of any oxygenate period in the future. Manufacturers and suppliers who choose to use an approved alternate fuel control measure shall annually submit a compliance plan to the director of the department of weights and measures not later than sixty days prior to the start of the oxygenate period.

C. From and after September 30 through March 31 of each year, all blends of gasoline with alcohol other than ethanol shall satisfy all of the requirements prescribed by section 41-2083 and rules adopted by the director under that section and the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

D. Notwithstanding subsection A of this section, if the director of the department of environmental quality has previously raised the minimum oxygen content to the maximum percentage of oxygen allowed for each oxygenate as provided by section 41-2125, the designated air quality planning agency for area B has considered, analyzed and reviewed the costs and benefits of all other reasonable and available control measures in lieu of reducing volatility requirements to nine pounds per square inch and the director of the department of environmental quality finds that area B has failed to

maintain the carbon monoxide national ambient air quality standards by violating the standard, beginning with the oxygenate period beginning on the following September 30 and for each oxygenate period thereafter in area B, the volatility requirements described by section 41-2083, subsection G may be reduced to nine pounds per square inch. If a violation of the carbon monoxide national ambient air quality standards is recorded after the volatility requirements have been reduced to nine pounds per square inch, the director of the department of environmental quality shall remove the one pound per square inch waiver for gasoline-ethanol blends.

E. Beginning on January 1, 2005, gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within this state shall not contain the following:

1. Methyl tertiary butyl ether that exceeds 0.3 per cent by volume.
2. Beginning on January 1, 2006, a total of more than 0.10 per cent oxygen by weight collectively from all of the following oxygenates:
 - (a) Diisopropylether (DIPE).
 - (b) Ethyl tert-butylether (ETBE).
 - (c) Iso-butanol.
 - (d) Isopropanol.
 - (e) Methanol.
 - (f) N-butanol.
 - (g) N-propanol.
 - (h) Sec-butanol.
 - (i) Tert-amylmethylether (TAME).
 - (j) Tert-butanol.
 - (k) Tert-pentanol (tert-amylalcohol).

F. Subsection E of this section does not prohibit the transshipment through this state, including storage incident to that transshipment, of gasoline that contains the oxygenates prescribed by subsection E of this section if both of the following apply:

1. The gasoline is used or disposed outside this state.
2. The gasoline is segregated from gasoline that is intended for use inside this state.

41-2123. Area A; sale of gasoline; oxygen content

(L99, ch. 295, sec. 11)

A. From and after November 1 through March 31 of each year:

1. All gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A or that is consumed in a motor vehicle in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A by a fleet owner shall, for a gasoline-ethanol blend, contain not less than ten per cent by volume of ethanol nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.

2. All gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A or that is consumed in a motor vehicle within a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A by a fleet owner shall, for a blend other than a gasoline-ethanol blend, contain not less than 2.7 per cent by weight of oxygen nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.

B. Notwithstanding subsection A of this section, the director of the department of weights and measures in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by manufacturers or suppliers of gasoline and that the directors determine will result in motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection A of this section and section 41-2083. In making this determination, the director of the department of weights and measures and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by section 41-2083 and with the minimum oxygen content or percentage by volume of ethanol as prescribed by this section.

C. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection B of this section and this subsection may be used by any manufacturer or supplier of gasoline unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. Manufacturers and suppliers who use an approved alternate fuel control measure shall annually submit a compliance plan to the director of the department of weights and measures no later than sixty days before the first day of a gasoline control period.

41-2124. Area A; fuel reformulation; rules

(L05, Ch. 104, sec. 3)

A. From and after May 1, 1999, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 41-2083, subsections D and F.

2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 41-2083, subsections D and F.

B. From and after November 1, 2000 through March 31, 2001 and from the period beginning November 1 through March 31 of each subsequent year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with standards for California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997 and shall meet the maximum vapor pressure requirements in section 41-2083, subsections D and F. The fuel described in this subsection shall meet the requirements of section 41-2123, subsection A, paragraph 1.

C. From November 1, 2000 through March 31, 2001 and for each winter season of November through March thereafter, the director of the department of weights and measures shall determine the average levels of the constituents in the gasoline sold or offered for sale in area A and shall provide the results of this determination to the director of environmental quality. The director of environmental quality shall analyze the data provided by the director of the department of weights and measures and, no later than July 1, 2001 and each July thereafter, shall determine the average daily carbon monoxide reductions resulting from the use of the gasoline

specified in subsection B of this section during the preceding winter season. If the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season are less than ninety per cent of the goal of thirty-two tons per day in 2001, thirty-one tons per day in 2003, thirty tons per day in 2005, twenty-nine tons per day in 2007 or twenty-eight tons per day in 2009, the director of the department of environmental quality shall immediately notify the governor, the president of the senate and the speaker of the house of representatives.

D. Any registered supplier or oxygenate blender, as defined in department rules, may petition the director to request that all registered suppliers or oxygenate blenders be allowed to comply with any provision of section 41-2123, subsection A, provided the petitioner can demonstrate that ethanol supply shortages are imminent.

E. The petition shall:

1. Identify specific supply conditions that will result in a shortage of ethanol.

2. Identify which oxygenate or oxygenates and the concentration that will be blended into gasoline for sale or use in area A.

3. Demonstrate that the alternative oxygenate blend comes closest to meeting a three and one-half per cent by weight oxygen content at reasonable cost, unless the registered supplier or oxygenate blender is petitioning to use a gasoline-ethanol blend containing less than ten per cent by volume of ethanol.

4. Specify a time period for compliance with any provision of section 41-2123, subsection A, not to exceed sixty days.

F. The director shall either grant or deny the petition in writing within seven days of its receipt. Any decision by the director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the director verifies that the basis for requesting the petition is factual.

G. The director may reauthorize a petition if the petitioner can demonstrate that the conditions have continued. The reauthorization of a petition shall not exceed thirty days.

H. The director of the department of weights and measures shall consult with the director of the department of environmental quality prior to granting, reauthorizing or denying any such petition.

I. The director of environmental quality in consultation with the director of the department of weights and measures shall adopt by rule:

1. Requirements to implement subsections A through E of this section.

2. Requirements for record keeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A through E of this section.

J. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

41-2125. Area B; sale of gasoline; oxygen content

A. From and after September 30 through March 31 of each year, all gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within area B or that is consumed in a motor vehicle within area B by a fleet owner shall contain not less than 1.8 per cent by weight of oxygen nor more than the maximum percentage of oxygen allowed by the provisions of a waiver issued by the United States environmental protection agency.

B. Notwithstanding subsection A of this section, at any time earlier than sixty days before September 30 of each year, the designated air quality planning agency for area B with the concurrence of the director of the department of environmental quality may give notice, pursuant to the applicable plan required under section 49-406 for the Tucson air planning area, to the director of the department of weights and measures that the minimum oxygen content for the ensuing oxygenate seasons will be increased not less than .3 per cent by weight of oxygen and not more than the maximum percentage of oxygen allowed for oxygenates by provisions of a waiver issued or other limits established by the United States environmental protection agency. Before making a determination to increase the minimum oxygen content pursuant to this subsection, the designated air quality planning agency for area B shall consider and conduct a cost-benefit analysis on all reasonable carbon monoxide emission reduction measures that could be implemented in lieu of increasing the minimum oxygen content.

41-2126. Use of gasoline purchased outside of area A or area B

This article does not prohibit the use within area A or area B of gasoline purchased outside of area A or area B which does not contain the percentage weights of oxygen required by this article if the use is incidental and not for the purpose of evading the requirements of this article.

41-2127. Exemption

The provisions of this article do not apply to a manufacturer's proving ground or a motor vehicle racing event held in a vehicle emissions control area.

41-2128. Inspections

A. On request, an interstate pipeline terminal or a motor fuel storage or dispensing site shall provide a product transfer document to the department. Product transfer documents may be stored off site as provided by department rule.

B. On request, a motor fuel storage or dispensing site shall provide access to motor fuel dispensing cabinets to the department for inspection of fuel dispensing meters and blending valves.

41-2131. Definitions

In this article, unless the context otherwise requires:

1. "Annual throughput" means the amount of gasoline transferred into or dispensed from a gasoline dispensing site during twelve consecutive months.
2. "Clean air act" means the clean air act of 1963 (P.L. 88-206; 42 United States Code section 7401-7671) as amended by the clean air act amendments of 1990 (P.L. 101-549).
3. "Gasoline dispensing site" means any site where gasoline is dispensed into a motor vehicle fuel tank from any stationary storage vessel.
4. "Stage I vapor collection system" means a system where gasoline vapors are forced from a tank into a vapor-tight holding system or vapor control system through direct displacement by the gasoline being loaded.
5. "Stage II vapor collection system" means a system where at least ninety per cent by weight of the gasoline vapors that are displaced or drawn from a vehicle fuel tank during refueling are transferred to a vapor-tight holding system or vapor control system.
6. "Vapor control system" means a system that prevents emissions to the outdoor atmosphere from exceeding 4.7 grains per gallon or eight grams per one thousand liters of petroleum liquid loaded.

41-2132. Stage I and stage II vapor recovery systems

A. A person shall not offer for sale, sell, install or use a new gasoline vapor recovery system, or any new or rebuilt component parts of the system, unless the system or component part has been certified by the California air resources board as of March 31, 2001 or after that date and has not been rejected by the department. The department shall maintain and keep current a list of stage I and stage II vapor recovery systems and component parts that are approved by the department. Only those systems that are approved shall be used in this state. All certified vapor recovery components must be clearly identified by a permanent identification affixed by the certified manufacturer or rebuilder.

B. For gasoline dispensing sites with a throughput of over ten thousand gallons per month in area A or area B as defined in section 49-541, and beginning on January 1, 2001 for gasoline dispensing sites with a throughput of over ten thousand gallons per month in area A but outside of the Phoenix area Maricopa county ozone nonattainment area as prescribed in 40 Code of Federal Regulations section 81.303, a person shall not transfer or allow the transfer of gasoline into storage tanks at gasoline dispensing sites unless the storage tank is equipped with either of the following:

1. A stage I vapor collection system consisting of a vapor-tight return line from the storage tank or its vent to the gasoline transport vehicle.

2. A properly installed on-site vapor control system connected to a vapor collection system.

C. In an ozone nonattainment area designated as moderate, serious, severe or extreme by the United States environmental protection agency under section 107(d) of the clean air act, area A or other geographical area as provided in subsection I of this section, an owner or operator of a gasoline dispensing site shall not transfer or allow the transfer of gasoline into a motor vehicle fuel tank at a gasoline dispensing site unless the gasoline dispensing site is equipped with a stage II vapor collection system. This subsection does not apply to gasoline dispensing sites with a throughput of less than ten thousand gallons per month, or to a gasoline dispensing site with a throughput of less than fifty thousand gallons per month in the case of an independent small business marketer of gasoline as defined in section 324 of the clean air act or to a gasoline dispensing site that is located on a manufacturer's proving ground. Beginning on January 1, 2001, this subsection applies to gasoline dispensing sites that are located within area A but outside the Phoenix area Maricopa county ozone nonattainment area as defined in 40 Code of Federal Regulations section 81.303.

D. An owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing site subject to stage I or stage II vapor collection requirements shall comply with the following:

1. Install all necessary stage I and stage II vapor collection and control systems and make any modifications necessary to comply with the requirements.

2. Provide adequate training and written instructions to the operator of the affected gasoline dispensing site and the gasoline transport vehicle.

3. Replace, repair or modify any worn or ineffective component or design element to ensure the vapor-tight integrity and efficiency of the stage I and stage II vapor collection systems.

4. Connect and ensure proper operation of the stage I and stage II vapor collection systems whenever gasoline is being loaded, unloaded or dispensed.

E. Before the initial installation or modification of any stage I or stage II recovery system, the owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing site shall obtain a plan review and approval from the department. Application for the plan review and approval shall be on forms prescribed and provided by the department.

F. The operator of each gasoline dispensing site using a stage II vapor recovery system shall conspicuously post operating instructions for the system in the gasoline or oxygenated fuel dispensing area. The instructions shall clearly describe how to fuel vehicles correctly with the vapor recovery nozzles used at the station and shall include a warning that topping off may result in spillage or recirculation of gasoline or oxygenated fuel and is prohibited.

G. The department of weights and measures in consultation with the department of environmental quality and the state fire marshal shall establish by rule standards for the installation and operation of stage I and stage II vapor recovery systems. The department of weights and measures shall establish by rule plan review and approval fees. In establishing those rules and standards, the director shall consider requirements in other states to assure that only state of the art technology is used.

H. Approval of a stage I or stage II vapor collection system by the department does not relieve the owner or operator of the responsibility to comply with other applicable statutes, codes and rules pertaining to fire prevention, environmental quality and safety matters.

I. Any county, city or town outside an ozone nonattainment area designated as moderate, serious or severe by the environmental protection agency under section 107(d) of the clean air act or outside of area A as defined in section 49-541 may require gasoline dispensing sites with a throughput greater than ten thousand gallons per month or fifty thousand gallons per month in the case of an independent small business marketer of gasoline as defined in section 324 of the clean air act to install, operate and maintain stage II vapor collection systems in accordance with this section. For a county, city or town considering the adoption of a resolution to require stage II vapor collection systems within its jurisdiction and on request, the department of environmental quality shall provide technical assistance in evaluating the air quality in that county, city or town and shall provide final review and approval of an adopted resolution.

J. A county board of supervisors or governing body of a city or town shall submit a resolution approved by the department of environmental quality to the director of the department of weights and measures requesting the imposition of the requirements for stage II vapor collection systems within its jurisdiction.

K. The director shall adopt, by rule, compliance schedules for gasoline dispensing sites located within the jurisdiction requesting stage II

vapor collection system requirements no later than twelve months after receipt of the resolution from the county board of supervisors or governing board of a city or town. All gasoline dispensing sites other than those that are exempt pursuant to subsection C of this section shall be required to comply with stage II vapor collection system rules within twenty-four months after the rules have been filed with the secretary of state.

L. A county board of supervisors or governing body of a city or town that adopts the requirements for stage II vapor collection systems may repeal those requirements by adopting a resolution to remove the imposition of those requirements within its jurisdiction unless the county, city or town is in an ozone nonattainment area that has since been designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act. On receipt of the resolution, the director of the department of weights and measures shall consult with the director of the department of environmental quality to verify that a county, city or town is outside of an ozone nonattainment area designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act. After consultation with the department of environmental quality, the director of the department of weights and measures shall revise the rules to repeal the requirements for stage II vapor collection systems within that jurisdiction as soon as practicable.

41-2133. Compliance schedules

Notwithstanding section 41-2132, subsection K relating to schedules of compliance:

1. Gasoline dispensing facilities located in an ozone nonattainment area designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act, in area A or in any other geographical area as provided in section 41-2132, subsection I for which construction began after the certification of rules adopted pursuant to section 41-2132 shall be constructed to include stage I and stage II systems that meet the minimum standards set forth in this chapter and department rules.

2. All gasoline dispensing sites located in an ozone nonattainment area designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act, in area A or in any other geographical area as provided in section 41-2132, subsection I that begin underground storage tank replacement and that apply for a permit pursuant to title 49, chapter 3, article 3 or 5 on or after September 30, 1992 shall be in compliance within six months after the effective date of the rules adopted pursuant to section 41-2132. Compliance with this article is a condition of the permit.

41-2134. Stage II rule effectiveness; enhanced enforcement

The director shall adopt rules to:

1. Enhance enforcement of the department's stage II vapor recovery program. The enforcement shall be enhanced through programs that may include increased frequency of or targeting of inspections, increased sampling frequency, use of portable analyzers or any other technique.

2. Establish standards and fees for required inspections of vapor recovery systems.